STAKEHOLDER COMMENTS REGARDING
DRAFT JULY 2020 PROPOSED METRO DISTRICT CHANGES

STAKEHOLDER COMMENTS

A. Comments on Debt Mill Levy

A.1: Allowing a debt mill levy to go unlimited once the debt is $\leq$ 50% of the AV is a positive for the district and its tax paying residents. The theory is that the power and protection of reaching an AV that is at least 2x the amount of the outstanding debt comes from the large AV. With such a large AV the need for higher mill levy to pay the debt is mitigated, the AV itself becomes the insulator from larger mill levy needs.

A.2: Of the three options, option #3 offers most opportunities to a district regardless of the board make up. Option #2 would be next best, and Option #1 (no unlimited mill levy) is the least desirable. When an investor knows that there is an unlimited mill levy, the risk goes down and with that the interest rate goes own. The larger AV is what protects from the need to actually go with higher and higher mill levies, so continuing to allow unlimited mill levy upon passing a threshold test or two is preferred over eliminating this concept altogether.

A.3: Regarding Debt Mill Levy option 3: Residential district may request City Council approval for unlimited debt mill levy once debt is less than or equal to 50% AV. As credit quality of a district improves, removing the debt mill levy cap may be beneficial in some situations. Option 3 provides the flexibility to take advantage of this occurrence while providing the City the opportunity to ensure removing the cap will be beneficial and will maintain compliance with the restrictions in the Service Plan. However, we suggest that obtaining the City's written consent is the appropriate mechanism to avoid the time and expense of a service plan amendment.

A.4: We strongly recommend the base assessment rate remain at the 7.96 level to allow new districts to generate tax revenues from the mill levy at the same levels as existing districts.

B. Comments on Developer Advances

B.1: Definition of Developer Advances – do you mean the principal amount of funds advanced by developer / homebuilder?

B.2: Section V.A.17 – the size of the debt limit will need to expand to count for the various debt instruments that now count against the Debt Issuance Limitation.

B.3: Do not count developer advances towards the borrowing limit. (I think I understand the purpose of this proposal but it would pose significant negative financial consequences to a metro district.)

B.4: Regarding Developer Advances that become long-term financial obligations added to Total Debt Issuance Limitation: Language should be added in the Service Plan to make clear that bonds issued to repay developer advances are considered a refunding of those developer advances and therefore are not double counted against the total debt issuance limitation.

B.5: Clarify the definition of "developer advances" to include only those advances evidenced by a note or other multi-fiscal year obligation by the district, not reimbursement agreements generally.

- Proposed language: Developer advances means "any funds recorded as District revenue that are advanced from a homebuilder or other entity developing the Project that are evidenced by a note or other multi-fiscal year obligation by the District and are to be repaid from future bond proceeds or other available revenue."

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C. Comments on Interest Rates

C.1: If you have a first series bond, then later want to issue a 2nd series bond which has a lower rate than the first series, then the district must refinance the 1st series as part of the 2nd series issuance? What if the 1st series is not yet callable? The proposed language has an unintended consequence here.

C.2: The proposed language that "All debt, developer advances, or other loans are subject to current market interest rates" is problematic because if the first bond series is not callable, the proposed revised language would restrict a second series.

- Proposed language: "At the time of any new Debt issuance, if current interest rates are lower than the initial Debt, the Board shall consider whether the terms of the outstanding Debt allow for refinancing, and if so, whether such refinancing would be in the best interests of the District."

C.3: Regarding proposal for interest rates on developer advances having to be a market rate or equal to the rate of an existing debt –

In the beginning it is likely that the developer advance is the only financial obligation. So what determines the "market rate" of a developer advance in the early stages when the risk is greater? What market is out there to help set this developer advance interest rate? Perhaps a stated "not to exceed developer advance rate of 8% or a market rate whichever is less" but still we need guidance on how to find a developer advance market rate. This concept could be difficult to establish and could cause an added expense to find someone who would opine on a developer advance market rate? If the district has a bond outstanding and a subordinate developer advance, the subordinate obligation would inherently have a larger interest rate since it is a higher risk to the holder and is subordinate.

C.4: Prohibit districts from issuing debt to fund capitalized interest (i.e. bond proceeds are used to fund the interest payments on the bonds for several years because property tax revenue is too low to fund the bonds).

C.5: Instead of setting an arbitrary cap on the maximum interest rate (such as 18% per annum), tie the maximum interest rate to LIBOR +5% or something similar. Your City has some districts where the builders are loaning millions to metro districts with net effective interest rates of 47%. With interest rates around 4% today for public debt, an 18% interest rate cap provides no financial protection to homeowners.

D. Comments on Operating Mill Levy

D.1: New Operations Mill Levy Limit – looks like only option #2 allows for any chance at an o/m mill levy being above 10. But if a district is going to have more physical operation and maintenance responsibility (which is in addition to governmental administrative expenses) then you likely will have some districts that cannot pay for all these type of expenses with 10 mills, and perhaps there are not enough residents willing to serve on the board, so the district would have to impose district operation fees to cover the short fall because of this o/m mill limit (so in the end the concept does not control a cost, rather it forces a district to extract an additional form of revenue from the residents). Perhaps option #3 should revised to be that it is capped at 10 unless city council approves a higher amount. The district (regardless of the board make up) could apply to the city for a waiver of the 10 mill cap and seek some higher cap and present the factors why, and city council could approve or deny. A revised option #3 here would be better.

D.2: Option 1, capping the O&M mill levy at 10 mills for residential districts, is acceptable with the following caveat:

- Regarding prohibition against using O&M mill levy revenue for repayment of debt - To ensure the District has sufficient funds to operate following its formation, we suggest that the O&M mill levy

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of 10 mills not be established until debt is issued. Once debt is issued, the District is limited to 10 mills for O&M and the revenue received from such mill levy may not be used for the repayment of debt.
D.3: Homeowners care most about stopping the continual rise in property taxes. Homeowners want to pay a flat annual amount in property taxes to their metro districts. This makes sense when you consider most of the money paid to a metro district is to fund the debt repayment for a onetime construction project. For those districts that provide multiple neighborhood services including park and recreation facility maintenance, covenant enforcement services, maintenance of community perimeter fencing, ect – the costs to provide these services is usually fixed (ignoring inflation). Capping the operating mill levy at 10 mills provides no financial protection to the homeowners if their home values increase 15%.
D.4: Also, capping the mill levy at 10 mills poses a danger to districts if home values drop 15%. District may need to cut services under such a scenario.
D.5: Instead of capping the mill levy, I recommend the City consider capping the total dollars that a District can spend to fund its operations. As home values rise and fall year-over-year, the district boards can adjust the mill levy up or down to ensure the same level of revenue funds the district's operations each year. Homeowners would be happy with this approach because – like a mortgage payment – the payment to the district would be fixed and predictable each year and not tied to the rise and fall of home values. To account for inflation, the City could tie the dollar spending cap to the Colorado CPI so spending caps do not become too restrictive on operating budgets 10 years down the road.
E. Comments on Disclosure Requirements
E.1: The disclosure requirements should align with the statutory obligations already imposed on homebuilders and developers and should take into account that the District is limited in its ability to control homebuilders' compliance. • Suggested language: "The District will use reasonable efforts and due diligence to cause the developer or homebuilder to provide a written notice of disclosure to all initial purchasers of property in the District that describes the impact of the District mill levy and fees on each residential property along with the purchase contract."
E.2: Disclosure Requirement – a district could give notice to the developers and builders of the written disclosure requirement along with a copy of such disclosure, but since the transaction between the initial purchaser and the home buyer is not a transaction that involves a district, the district cannot be required to police that the developer or homebuilder is in compliance on these private party transactions.
E.3: Proposed requirement for District website – this is an added cost to any district and the city is also looking to limit the o/m mill levy to 10 mills. That could be a problem for some districts. Also, by when would a newly formed district have to get a website created? The SIPA websites are taking longer than 8 months to get created in some cases. There needs to be a reasonable time given to a newly formed district to adequately get a web company hired, design the website, etc., and there is a cost to create a website, a cost for ongoing website maintenance, and a push to limit the o/m mill to 10 mills when the district will have other admin and physical operation costs…… perhaps the district is allowed the option to create its own, or make arrangements with a community HOA to have some dedicated space on the HOA website in lieu of being forced to create its own independent website. Looking to give the district some flexibility with a website.

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E.4: Commented during webinar that district does not have ability to enforce the requirement among other developers and builders, did not recommend specific disclosure form but rather to check statutory disclosure requirements.

(Emailed summary of existing statutory disclosure requirements for special districts.)

F. Comments on Service Plan Expiration

F.1: Against having this, not useful, doesn't achieve what you are trying to get at:

- Would incentivize developer to issue debt prior to when it should happen
- Development will be on a different time track
- Only one other city has an expiration on their service plans
- District won't get best interest rate on debt

F.2: Setting an expiration presents several concerns, including:

- the change will insert significant uncertainty into long-term planning, particularly for large districts with long build-outs, and may discourage investment;
- the change does not provide any flexibility if an economic downturn occurs following the District's initial build-out phase; and
- in line with the uncertainty the change will create, the short life of the service plan could incentivize developers to issue debt early so they avoid having to return to City Council, which may result in debt issuances at higher rates which would negatively impact property owners.

We recommend that this proposed change be removed, or in the less-preferred alternative, to reduce costs, we suggest that if the District does not issue debt within 5 years, the District must request the City Council's written consent to extend the effective term of the Service Plan and if the City does not take action with 45 days, the prior service plan automatically remains in place for an additional 5 years.

G. Comments on CSP Requirement

G.1: We recommend that the City allow a district to seek prior to the approval of a CSP, however, the District shall not be authorized to issue any debt or impose a debt mill levy as proposed in the Service Plan until the CSP is approved. This will remove uncertainty regarding subsequent approvals. We prefer to have the issuance of debt and imposition of a debt mill levy conditioned on approval of the CSP rather than have to go back to the City again.

This is the approach Colorado Springs uses (see below) and it works very well and provides the City with protection that the District's hands are tied until land-use approvals are complete. Below is the language in the model service plan for Colorado Springs we recommend implementing:
"On or before the date on which there is an Approved Development Plan, the District shall not (a) issue any debt, (b) impose a mill levy for the payment of debt by direct imposition or by transfer of funds from the operating fund to the debt service funds, or (c) impose and collect any fees used for the purpose of repayment of debt."

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H. Miscellaneous Stakeholder Comments
H.1: Require the metro district boards to hold all meetings within the boundaries of the City (or, at least require this after the first certificate of occupancy is issued within the district).
H.2: Require the District's annual report to the City to include any pending or anticipated claims to be filed under 62-60 to 62-69 of the City Code regarding reimbursement procedures for "shared" public infrastructure (Many districts and consultants serving these districts are either unaware of this ordinance or they intentionally ignore this ordinance to the detriment of the taxpayers they serve)
H.3: Prohibit metro districts from purchasing public infrastructure that was not subject to a public bid process.